

FILED 08-20-08 10:00 AM  
CLERK OF DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**WAYNE COLE,**

**Civ. No. 06-381-HO**

**Petitioner,**

**ORDER DISMISSING HABEAS  
CORPUS PETITION**

**v.**

**SHARON BLACKETTER,**

**Respondent.**

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This matter having come before the Court on the motion of the Petitioner to voluntarily dismiss his habeas corpus petition,

IT IS HEREBY ORDERED that the Petition for a Writ of Habeas Corpus is dismissed without prejudice. In the event that the decision in *Blakely v. Washington*, 542 U.S. 296 (2004), is later made retroactive to cases on collateral review, Petitioner has leave to reopen this case only as to the *Blakely* issues, and the limitations period shall be deemed tolled from the date this Order is signed until sixty (60) days after the date of the decision rendering *Blakely*

retroactively applicable. If *Blakely* is made retroactive and the Petitioner moves to reopen this case during the above-referenced 60-day period, Petitioner may also amend the Petition as of right so as to properly plead all *Blakely*-based claims in this Court.

IT IS SO ORDERED this 18<sup>th</sup> day of August, 2008.

  
THE HONORABLE MICHAEL R. HOGAN  
U.S. District Court Judge

Submitted by:

/s/ Thomas J. Hester  
Thomas J. Hester  
Attorney for Petitioner

Lester Huntsinger (by consent)  
Attorney for Respondent